



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

April 5, 2005

Mr. Andrew C. Fisk, Director
Bureau of Land & Water Quality
Maine Department of Environmental Protection
17 State House Station
Augusta Maine 04333-0017

Dear Mr. Fisk:

We are responding to your letter of February 7, 2005 requesting notification that the Use Attainability Analysis (UAA) for Ragged Lake and Seboomook Lake satisfies the criteria of 40 CFR Section 131.10 (g), and that the Legislature's adoption of a subcategory of designated use consistent with the UAA would therefore be approvable. For the reasons discussed below, EPA agrees that the UAA supports the Maine Board of Environmental Protection's conclusion that attainment of the Class GPA designated use for aquatic life and habitat in hydropower impoundments is not feasible for these waters. We further agree that the adoption of a subcategory of a designated use consistent with the UAA would be appropriate, and we have provided suggestions related to the proposed statutory language. Please be aware, however, that this letter does not constitute EPA's approval of any legislative revisions to Maine's water quality standards. Upon formal submittal of adopted water quality standards revisions for Ragged and Seboomook Lake, EPA will review those revisions in accordance with Section 303(c) of the Clean Water Act and 40 C.F.R. Part 131, and will take action as appropriate.

EPA has reviewed Volumes I and II of the UAA prepared for Ragged and Seboomook Lake, located on the Penobscot River, Somerset and Piscataquis Counties, Maine, including the additional information that was provided in response to EPA's requests for clarification of several issues. The Board concluded, in part, that attainment of the GPA designated use for aquatic life and habitat was not feasible for Seboomook Lake for the reason provided in 40 C.F.R. § 131.10(g)(3), "Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place." Testimony by Maine's Department of Environmental Protection (ME DEP) asserted that the watershed upstream of Seboomook Lake Dam "is one of the largest and least altered aquatic ecosystems in the northeastern U.S," despite impacts from drawdown on the Seboomook Lake impoundment, because the dam currently is a barrier to upstream movement of invasive non-native aquatic species. The UAA indicates that any drawdown limit of less than 17 foot for Seboomook Lake would represent a point where, in combination with drawdowns/usable storage in other impoundments included as part of the Great Lakes Hydro America Storage Project (storage project), it likely that the project and maintenance of Seboomook Lake Dam would be abandoned. Evidence indicates that abandonment of the project would allow upstream

movement of invasive, non-native aquatic species and the associated environmental damage to the existing aquatic system.

The alternatives analysis prepared as part of the UAA documentation process balanced potential drawdowns for Seboomook Lake, Ragged Lake, and several other impoundments that are part of this storage project in an attempt to reduce impacts to aquatic habitat, while maintaining storage volumes needed for the project to remain viable. The UAA indicates that any drawdown limit of less than 20 feet for Ragged Lake also represents a point where it is likely that the storage project as a whole would be abandoned (thus presenting the ability for invasive species to move upstream of Seboomook Dam). Therefore, EPA believes that the UAA demonstrates that attainment of the GPA designated use for aquatic life and habitat is not feasible for Ragged Lake for the same reason as has been documented for Seboomook Lake; i.e., at both lakes, drawdowns that are necessary to meet the current water quality standards would lead to the abandonment of the project and the upstream movement of invasive non-native species above Seboomook Dam.

Notwithstanding the discussion above, EPA has concerns with some of the positions presented in the UAA as supporting a use revision. EPA recognizes the importance of dam safety and the effects that dam operations can have on downstream flooding. The UAA does not, however, contain enough information describing how the alternatives would affect the severity, frequency, and duration of flooding, and does not document the extent to which different drawdown regimes would affect downstream flooding. Similarly, the UAA does not provide documentation to support the conclusion that any benefit in the additional littoral habitat between drawdowns of 17 feet and 11 feet in Seboomook Lake would be "marginal at best," and EPA is not persuaded that this is an accurate assessment. Nevertheless, because these two issues are not critical to the demonstration that 40 C.F.R. § 131.10(g)(3) has been satisfied, we do not believe it is necessary to revise the UAA to address these concerns.

On March 28, 2005 LD 1497 a bill entitled, "An Act to Amend the Laws Governing Water Quality Standards for Ragged and Seboomook Lake" (partially cited below) was referred to the Maine Legislature's Committee on Natural Resources. The proposed revisions to 38 MRSA Section 464 sub 9-A with respect to Ragged Lake is as follows:

For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended and licensing of modifications under section 636, Ragged Lake, located in the Penobscot River, West Branch drainage, is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundment if that habitat and aquatic life reflects the effects of annual drawdowns of up to 20 feet.

The proposed revision with respect to Seboomook Lake is as follows:

For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended and licensing of modifications under section 636, Seboomook Lake, located in the Penobscot River, West Branch drainage, is deemed to have met the habitat characteristics and aquatic life criteria in the existing

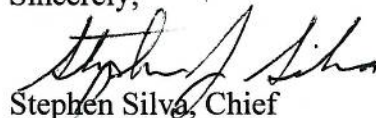
impoundment if that habitat and aquatic life reflects the effects of annual drawdowns of up to 17 feet.

The proposed statutory language for Ragged and Seboomook Lakes is written as a presumption of attainment of habitat and aquatic life criteria. This is a concern for two reasons. First, water quality standards are to establish use goals for surface waters, and criteria that describe the ambient conditions necessary to protect those uses. Whether a water is in attainment of its designated uses and criteria is a related but separate issue. Second, while the UAA outcome recognizes that the aquatic habitat and aquatic life goals for Ragged and Seboomook Lakes are the habitat and aquatic community that can exist in the presence of drawdowns to a maximum of 20 feet and 17 feet, respectively, operation of these waters for hydroelectric storage is not the only action that can affect aquatic life use attainment. In addition, no information has been submitted to indicate that the standards for those portions of the lakes which are lower than 17 feet below full pond (elevation 1,073 feet USGS datum) at Seboomook and lower than 20 feet below full pond (elevation 1,115 feet USGS datum) at Ragged cannot be met, although it is possible that these drawdowns will effect waters in these areas of the lakes.

Therefore, EPA believes that it is necessary that the language be redrafted to address these concerns. One example of possible language is: *The habitat and aquatic life criteria for Ragged Lake and Seboomook Lake are those contained in section 465.4.C except to the extent determined unattainable due to maximum annual drawdowns of up to 20 feet and 17 feet, respectively, in accordance with the Use Attainability Analysis.*

If you have any questions on our comments please contact me or Ralph Abele or Bill Beckwith of my staff.

Sincerely,



Stephen Silva, Chief
Water Quality Branch
cc: BEP Service List

